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REMARKS

The Examiner's rejection of claims 1, 4 and 5 under 35 U.S.C. 102(b) as being anticipated by Walters, U.S. Patent No. 4,014,520 is respectfully traversed.

It is elementary patent law that for the Examiner to sustain a rejection of anticipation under 35 U.S.C. 102, each and every element of the claimed invention must be expressly disclosed in the reference cited. If the prior art does not disclose all elements of the invention, the invention was not "anticipated." Carman Industries, Inc. v. Wahl, C.A. Fed. 1983, 220 U.S.P.Q. 481, 724 F.2d, 932.

Although the Walters patent discloses a railing assembly (shown mounted on a balcony) having pickets and a top rail and a bottom rail, the Walters patent does not disclose several elements in the claimed structure recited in applicant's claim 1. Applicant's claim 1 requires "a second bottom bar substantially identical to said first bar." As shown in Figure 3 of Walters, the top bar 14 is completely different than the bottom bar 18 in structure. The pickets in applicant's invention do not fit in holes through the connecting bars but are spaced between individual spacer plugs. Claim 1 recites that "said spacer plugs being sized in length to provide a desired distance apart between said pickets when in spaced engagement between adjacent pickets." The pickets in Walters require special slots 88 as shown in Figure 2 of Walters that fit into apertures 58 and engage additional tabs in bar 46. None of these structural elements match the elements recited in applicant's claim 1. The efficiency created by applicant's novel invention is that it utilizes standard rectangular pickets that can be easily inserted between individual spacer plugs without all the extra connector configurations shown in Walters. Applicant's claim 1 requires "a plurality of elongated, rigid pickets having a substantially rectangular cross section, with the width of one dimension of said rectangle being sized for snug fit into lower bar channel portions." The Walters device shown in Figure 2 requires a two dimensional configuration for proper fit. A thorough review of the

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construction of Walters and the interaction between the pickets 80, the cover locking plate 40 and the openings 58 compared with applicant's claimed invention and the non-complexity of applicant's structure in terms of the interaction between standard rectangular pickets and the spacer plugs show that applicant's claimed invention is quite different in structure than Walters. Each and every element of the claimed invention is not shown in Walters because it is a completely different structure.

Inasmuch as claim 4 depends from independent claim 1, it is applicant's position that claim 4 is not anticipated by Walters for the reasons given above. Claim 5 is a dependent claim that depends from independent claim 1. Walters lacks the necessary elements for anticipation and, therefore, claim 5 is not anticipated by Walters for the reasons given above. There is no teaching in Walters to mount the railing assembly such that the pickets are angled to compensate for an inclined surface with the pickets remaining vertical and the cross bars being angled.

In summary, with respect to claims 1, 4 and 5, it is applicant's position that the Walters reference does not anticipate applicant's claim 1, claim 4 and claim 5 under 35 U.S.C. 102(b).

The Examiner's rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Walters, U.S. Patent No. 4,014,520 in view Grimm, et al., U.S. Patent No. 4,421,302 is respectfully traversed. For a proper rejection under 35 U.S.C. 103(a), the Examiner must look at the test provided in the Supreme Court case of Graham v. John Deere Co., 382 U.S. 1, 17-18, 148 U.S.P.Q. 459, 467 (1966). The test of obviousness is whether the references taken together would suggest to one of ordinary skill to make applicant's claimed invention. CR Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998). The Examiner asserts that the Walters patent discloses spacer plugs between each pair of adjacent pickets and are mounted within the top bar, the end face of each spacer plug being substantially perpendicular to the longitudinal axis of each spacer plug for engaging the side wall of the picket. It is applicant's position that the

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cover locking plate 40 shown in Walters Figure 2 does not engage the pickets with the end face of each spacer plug at all. The Grimm, et al. reference is completely different in structure than either applicant's claimed invention in claim 1 or Walters. The filets 54 in the Grimm, et al. patent are provided after the hand rail assemblies have been installed as described between the newels 14. These filets 54 do not teach and have nothing to do with locking the pickets in place and spacing the pickets apart as recited in applicant's claim 1. In fact, the pickets shown in Grimm, et al. are nailed in place using nails 55. The references taken together do not teach applicant's invention nor make it obvious under 35 U.S.C. 103 since the assemblies shown in Walters and Grimm, et al. are not even compatible for their intended functions let alone provide some type of structural teaching or suggestion to arrive at applicant's claimed invention.

The Examiner's rejection of claim 3 under 35 U.S.C. 103(a) as being unpatentable over Walters, U.S. Patent No. 4,014,520 in view of Ballerstein, U.S. Patent No. 5,062,732 is respectfully traversed. Applicant herein reiterates applicant's remarks above concerning 35 U.S.C. 103 rejections and the Walters reference. The Examiner cites Ballerstein to teach the welding of rails. Ballerstein does not provide any teaching or disclosure that remotely relates to the invention applicant has claimed in claim 1, which is the independent claim from which claim 3 depends. Applicant herein reiterates the comments made above with respect to Walters and further adds that Walters is sadly deficient in providing applicant's claimed invention that includes claim 1 and claim 3. There are no suggestions or teachings in either Walters or Ballerstein to arrive at the invention as claimed by the applicant including the structural elements that have been discussed above even with respect to the anticipation rejection with respect to applicant's claim 1. The fact that Ballerstein uses welding with the structure disclosed in Ballerstein is completely inapplicable for any teaching used in conjunction with Walters to arrive at applicant's claimed invention. As used in applicant's invention, the absence of welding for the pickets which are joined together by

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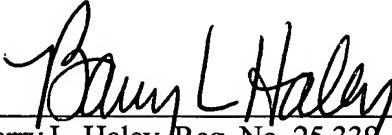
spacer plugs without fasteners is all put together as an entire railing system by welding the top bar and the bottom bar to first and second rigid posts. This puts the whole unit together. Such a suggestion or teaching is lacking in Ballerstein.

Applicant has amended claims 1 through 5 in accordance with the objections made by the Examiner in the Examiner's initial review of the claims.

It is applicant's position that the claims as now amended are allowable over the art of record.

If there are any additional charges, including Extensions of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,



Barry L. Haley, Reg. No. 25,339
Malin, Haley & DiMaggio, P.A.
1936 S. Andrews Avenue
Fort Lauderdale, Florida 33316
(954) 763-3303